

# EXHIBIT 5

Volume I  
Pages 1 to 102  
Exhibits None

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SUSANNA MIRKIN and BORIS :  
MIRKIN, Individually and on :  
Behalf of All Others :  
Similarly Situated, : Civil Action  
Plaintiffs, : No. 18 Civ. 2949  
vs. : (ARR) (RER)  
XOOM ENERGY, LLC; and XOOM :  
ENERGY NEW YORK, LLC, :  
Defendants. :

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VIDEOTAPED DEPOSITION OF DERYA ERYILMAZ,  
Ph.D., a witness called by the Defendant, taken  
pursuant to the Federal Rules of Civil Procedure,  
before Alexander K. Loos, Registered Diplomate  
Reporter and Notary Public in and for the  
Commonwealth of Massachusetts, at the Offices of  
Veritext Legal Solutions, 101 Arch Street, Suite  
650, Boston, Massachusetts, on Tuesday, November 15,  
2022, commencing at 10:25 a.m.

PRESENT:

Wittels McInturff Palikovic  
(By Steven L. Wittels, Esq.; Steven D.  
Cohen, Esq. (Via videoconference); and  
Ethan D. Roman, Esq. (Via videoconference))  
E-mail: Slw@wittelslaw.com  
Sdc@wittelslaw.com  
Edr@wittelslaw.com  
18 Half Mile Road  
Armonk, NY 10504  
914.775.8862  
for the Plaintiffs.

<p>1 BY MR. MATTHEWS:</p> <p>2 Q. So what does a "big discrepancy" mean to</p> <p>3 you in that context?</p> <p>4 MR. WITTELS: Objection to form.</p> <p>5 THE WITNESS: If the XOOM's rates --</p> <p>6 charged rate is not very -- is not equal or very</p> <p>7 close to actual and estimated supply costs, then --</p> <p>8 then there's a discrepancy.</p> <p>9 BY MR. MATTHEWS:</p> <p>10 Q. I understand.</p> <p>11 But I'm -- I'm trying to -- to get you to</p> <p>12 tell me --</p> <p>13 A. Uh-huh.</p> <p>14 Q. -- what "very close to" means.</p> <p>15 Does it mean 20 percent higher?</p> <p>16 MR. WITTELS: Objection. I think she's</p> <p>17 told you.</p> <p>18 THE WITNESS: So I guess -- let me step</p> <p>19 back and explain.</p> <p>20 So if it says "based on XOOM's actual and</p> <p>21 estimated supply costs," then, you know, they</p> <p>22 convert this into a rate, right? So XOOM's costs</p> <p>23 should be not -- XOOM's rates should be very, very</p> <p>24 close to -- when you're converting this into a rate,</p> <p style="text-align: right;">Page 38</p>	<p>1 hour. And the cost is basically a more gross term.</p> <p>2 So you take that cost, divide it by the</p> <p>3 amount of usage, and you get a dollar per unit</p> <p>4 basis. So that is actually -- the cost is driving</p> <p>5 the rate.</p> <p>6 So that means it shouldn't be far away from</p> <p>7 what the cost is presented. All you do is you take</p> <p>8 that cost and convert it into a per-unit basis. So</p> <p>9 therefore what you have is an actual and estimated</p> <p>10 cost is your main driver of what you obtain as a</p> <p>11 rate. So you transform into a rate, per-unit basis.</p> <p>12 So that's why I am defining, when you say</p> <p>13 "based on," it should be very close to the actual</p> <p>14 and estimated supply costs, because that's driven</p> <p>15 by -- that's one of the key inputs to drive the</p> <p>16 rate.</p> <p>17 Q. Does "very close to" mean "equal to"?</p> <p>18 MR. WITTELS: Objection, asked and</p> <p>19 answered.</p> <p>20 BY MR. MATTHEWS:</p> <p>21 Q. On a per-dollar per-unit basis?</p> <p>22 MR. WITTELS: Objection.</p> <p>23 THE WITNESS: As I mentioned, even if it's</p> <p>24 not the actual equal, but it should be super close</p> <p style="text-align: right;">Page 40</p>
<p>1 that should be very close to the actual and</p> <p>2 estimated supply costs that presented in their data</p> <p>3 sets.</p> <p>4 BY MR. MATTHEWS:</p> <p>5 Q. Okay. If the rate was ten percent higher,</p> <p>6 in your opinion, would that still be very close to</p> <p>7 actual and estimated supply costs?</p> <p>8 A. No. Then that would be still there's --</p> <p>9 that is -- that is still not the actual and</p> <p>10 estimated supply cost. It's above that.</p> <p>11 Q. I understand. I'm not good at math, but I</p> <p>12 know that.</p> <p>13 But I'm asking -- you said it had to be</p> <p>14 "very close to." And you distinguish that from</p> <p>15 being exactly equal to, right?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Do you agree with that?</p> <p>18 MR. WITTELS: Objection. Objection to</p> <p>19 form.</p> <p>20 THE WITNESS: So -- okay. Let me explain</p> <p>21 it this way:</p> <p>22 So rate is, like, dollar per megawatt hour,</p> <p>23 right? So when we are charged by utilities or</p> <p>24 energy companies, we are charged dollar per megawatt</p> <p style="text-align: right;">Page 39</p>	<p>1 to, very close to what the actual and estimated</p> <p>2 supply cost is.</p> <p>3 BY MR. MATTHEWS:</p> <p>4 Q. Is that two percent more? Is it five</p> <p>5 percent more?</p> <p>6 What does "very close to" mean to you? You</p> <p>7 are a mathematician and a data analytics --</p> <p>8 A. Sure.</p> <p>9 Q. -- specialist.</p> <p>10 So I would like to know, in your view,</p> <p>11 mathematically, how much more could the rate be than</p> <p>12 actual and estimated supply costs on a</p> <p>13 dollar-per-unit basis and still fall within your</p> <p>14 definition of "very close to."</p> <p>15 MR. WITTELS: Objection. Objection to</p> <p>16 form.</p> <p>17 THE WITNESS: I guess -- so as I mentioned</p> <p>18 that when you are transforming the rate from cost,</p> <p>19 you are taking a lump sum and converted into a rate.</p> <p>20 So then there's no, like, specific percentage I can</p> <p>21 tell you that it should be X percent higher. It</p> <p>22 should be based on whatever the cost is and you</p> <p>23 convert that into a rate per-unit basis.</p> <p>24 So that means you're taking the actual and</p> <p style="text-align: right;">Page 41</p>

<p>1 estimated supply costs in order to derive your rate.  2 So that means there's no specific, you know, magic  3 percentage that I can tell you that, even if it's  4 within that percentage, I can't tell you that. But  5 that -- to me, when it's based on you take a value  6 and convert that into a per-unit basis, then you  7 take that actual and estimated supply cost as it is,  8 and then you convert that into a rate.  9 BY MR. MATTHEWS:  10 Q. Uh-huh.  11 A. So that's how you would do it. And that's  12 why it should be very close to, I guess.  13 Q. And that's the calculation you did under  14 model one, right?  15 A. That's -- that's correct.  16 Q. And you are going to tell the ladies and  17 gentlemen of the jury that if the rate charged was  18 anything above the supply costs under that  19 calculation, that XOOM should have to give that  20 money back, right?  21 A. Yes.  22 Q. Okay. Which would mean that, in your view,  23 "based on actual and estimated supply costs" under  24 model one means equal to supply costs --</p> <p style="text-align: right;">Page 42</p>	<p>1 BY MR. MATTHEWS:  2 Q. Okay. Thanks.  3 And in your opinion, "based on actual and  4 estimated supply costs" also means that XOOM cannot  5 consider anything other than actual and estimated  6 supply costs when setting its rates, correct?  7 A. Again, I would look at the contract. It  8 says:  9 "... based on actual and estimated  10 supply costs, which may include, but not  11 limited to prior period adjustments" --  12 THE REPORTER: "Which may include, but  13 not..."  14 MR. WITTELS: Slow down so he can take --  15 the reporter has to take it.  16 THE WITNESS: Oh, I'm sorry.  17 Which -- I guess:  18 "... which may include, but not be  19 limited to prior period adjustments,  20 inventory and balancing costs."  21 So to your question, it may include these,  22 but -- may include these, but other than that, yes,  23 it should be based on actual and estimated supply  24 costs.</p> <p style="text-align: right;">Page 44</p>
<p>1 MR. WITTELS: Objection.  2 BY MR. MATTHEWS:  3 Q. -- right?  4 MR. WITTELS: Objection.  5 THE WITNESS: It's -- I guess exact equal  6 to definition is -- doesn't fit here because, as I  7 mentioned, rate is a transformation of cost.  8 So what -- essentially I'm taking this  9 actual and estimated supply costs and converting  10 into a rate. That's why it cannot be 1:1 equal, but  11 it has to be very close to what is presented in the  12 actual cost.  13 BY MR. MATTHEWS:  14 Q. It's effectively 1:1 equal, right? That's  15 what model one seeks to do --  16 MR. WITTELS: Objection.  17 BY MR. MATTHEWS:  18 Q. -- right?  19 MR. WITTELS: Please don't interrupt her.  20 Objection.  21 THE WITNESS: Model one takes the  22 discrepancy that we found in the rate versus the  23 XOOM's actual and estimated supply costs. That's  24 correct.</p> <p style="text-align: right;">Page 43</p>	<p>1 BY MR. MATTHEWS:  2 Q. And nothing else?  3 A. Uh-uh. No.  4 Q. Correct?  5 A. Correct.  6 Q. Okay. Let me hand you what has previously  7 been marked as Exhibit 5 to -- which is a copy of  8 the --  9 A. Complaint.  10 Q. -- first amended class action complaint.  11 And I also hand you what was previously marked as  12 Exhibit 6, which is an exhibit to that class action  13 complaint --  14 A. Right.  15 Q. -- called "market supply cost build up."  16 Have you seen these documents before?  17 A. Yes.  18 Q. Did you prepare the market supply cost  19 build up that is Exhibit 6?  20 A. This one? No. I was not part of this case  21 at the time.  22 Q. Okay. There we go.  23 And you would disagree with -- let me --  24 let me find the paragraph.</p> <p style="text-align: right;">Page 45</p>

<p>1 THE REPORTER: It was what?</p> <p>2 THE WITNESS: It was Loehde. I don't</p> <p>3 remember the witness' last name. Sorry.</p> <p>4 BY MR. MATTHEWS:</p> <p>5 Q. But you have some recollection -- I'm not</p> <p>6 asking you to identify the witness, but you have</p> <p>7 some recollection of XOOM witnesses testifying to</p> <p>8 the fact that XOOM has fixed costs that are not</p> <p>9 included in the supply costs reported in the</p> <p>10 rate-setting workbooks, right?</p> <p>11 A. I remember, like, a witness defining a</p> <p>12 fixed cost; but I don't really remember, like,</p> <p>13 whether it was included in the supply costs or not</p> <p>14 at this moment. I mean, if it's in front of me, I</p> <p>15 can take a look at it, but I don't remember the</p> <p>16 specific wording.</p> <p>17 Q. When you prepared the calculation for model</p> <p>18 one, did you take into account XOOM's fixed costs?</p> <p>19 A. No. I actually just took the supply cost</p> <p>20 related information and calculated the actual and</p> <p>21 estimated supply costs as produced by XOOM.</p> <p>22 Q. So if XOOM did not include fixed costs in</p> <p>23 the supply costs reported in the rate-setting</p> <p>24 workbook --</p> <p style="text-align: right;">Page 66</p>	<p>1 said?</p> <p>2 MR. WITTELS: Objection.</p> <p>3 THE WITNESS: I guess I thought you were</p> <p>4 saying that supply costs are -- you know, may -- you</p> <p>5 know, I don't know.</p> <p>6 I guess the way I understand it from what</p> <p>7 you've described is have I considered supply cost</p> <p>8 plus the other costs? But I did not. I just took</p> <p>9 the components of the supply cost, and I added them</p> <p>10 up -- I mean they were all, like, in a total supply</p> <p>11 column -- and calculated the excess -- excess</p> <p>12 charges.</p> <p>13 Q. Understood.</p> <p>14 So if fixed costs -- if XOOM has fixed</p> <p>15 costs in addition to the reported supply costs --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- then the only place that those fixed</p> <p>18 costs appear in your calculation under model one</p> <p>19 would be in the overcharge itself?</p> <p>20 MR. WITTELS: Objection.</p> <p>21 BY MR. MATTHEWS:</p> <p>22 Q. Correct?</p> <p>23 MR. WITTELS: Objection.</p> <p>24 THE WITNESS: I mean, I cannot tell from</p> <p style="text-align: right;">Page 68</p>
<p>1 A. Uh-huh.</p> <p>2 Q. -- then those fixed costs would be included</p> <p>3 in what you have characterized as an "overcharge"</p> <p>4 under model one, right?</p> <p>5 MR. WITTELS: Objection.</p> <p>6 THE WITNESS: As I mentioned, those fixed</p> <p>7 costs are not considered as part of supply costs;</p> <p>8 therefore, they are not included in the model.</p> <p>9 BY MR. MATTHEWS:</p> <p>10 Q. They're not --</p> <p>11 A. Included my calculation. I only considered</p> <p>12 supply -- the components of the supply cost.</p> <p>13 Q. They would not be included in the supply</p> <p>14 cost portion of your calculation, correct?</p> <p>15 MR. WITTELS: Objection.</p> <p>16 THE WITNESS: Again, I only considered the</p> <p>17 supply cost components. Because, you know, we are</p> <p>18 interested in looking at the supply costs and what</p> <p>19 the rate has been charged by XOOM.</p> <p>20 BY MR. MATTHEWS:</p> <p>21 Q. Yeah.</p> <p>22 A. So anything beyond supply cost is not</p> <p>23 included in the supply cost column.</p> <p>24 Q. Okay. How is that different from what I</p> <p style="text-align: right;">Page 67</p>	<p>1 just looking at the data what that excess charge is</p> <p>2 included. They do not define -- XOOM did not define</p> <p>3 where that excess charge came from.</p> <p>4 There was no calculation providing that,</p> <p>5 that included the fixed cost. They -- there was no</p> <p>6 calculation that showed that rate included fixed</p> <p>7 costs as I reviewed the data. The data came in as</p> <p>8 rate versus the total cost of the components of the</p> <p>9 supply cost, or the total cost, and then the</p> <p>10 difference. I cannot tell what is included in the</p> <p>11 discrepancy. It was not described in the data.</p> <p>12 BY MR. MATTHEWS:</p> <p>13 Q. Okay. Model two.</p> <p>14 A. Uh-huh.</p> <p>15 Q. Model two, as we covered earlier, is</p> <p>16 essentially the same as model one, except that it</p> <p>17 allows XOOM to recover the same gross margin on</p> <p>18 variable-rate customers that XOOM's documents</p> <p>19 reported it recovered for fixed-rate customers,</p> <p>20 right?</p> <p>21 A. Right.</p> <p>22 Again, we -- exactly. The method one plus,</p> <p>23 if there was a margin -- you know, there's -- it</p> <p>24 doesn't say in the contract that there should be a</p> <p style="text-align: right;">Page 69</p>


<p>1 margin.</p> <p>2 But if -- suppose there is a margin. We</p> <p>3 basically provided that as an example to show, you</p> <p>4 know, what would be the charge look like.</p> <p>5 And looking at the margin reports, at least</p> <p>6 the margin that should be charged should be equal to</p> <p>7 the fixed-rate customers, which, you know, XOOM has</p> <p>8 made -- you know, has charged its fixed-rate</p> <p>9 customers, too, a margin. So there was that rate</p> <p>10 taken to calculate the overcharges.</p> <p>11 Q. And the purpose of -- of illustrating that</p> <p>12 second model was in case the court or the jury</p> <p>13 decides that some recovery of margin is</p> <p>14 appropriate --</p> <p>15 A. Yes.</p> <p>16 Q. -- right?</p> <p>17 But you don't believe that that reading of</p> <p>18 the contract is appropriate, right?</p> <p>19 A. No. By the read of the contract, it didn't</p> <p>20 specify margin, this contract, so -- and that's why</p> <p>21 I don't believe, yes.</p> <p>22 Q. So, in your view, if a contract doesn't</p> <p>23 specify that the company will recover margin, then</p> <p>24 the company is not allowed to recover margin?</p> <p style="text-align: right;">Page 70</p>	<p>1 BY MR. MATTHEWS:</p> <p>2 Q. If -- if an ESCO does not specify in a</p> <p>3 variable-rate contract that the rate will include</p> <p>4 margin, then, in your view, that ESCO cannot seek to</p> <p>5 recover margin --</p> <p>6 MR. WITTELS: Objection.</p> <p>7 BY MR. MATTHEWS:</p> <p>8 Q. -- on its variable rate?</p> <p>9 MR. WITTELS: She didn't say that.</p> <p>10 Objection.</p> <p>11 THE WITNESS: Is that a hypothetical</p> <p>12 example that -- are we just talking about X ESCO</p> <p>13 here, or --</p> <p>14 BY MR. MATTHEWS:</p> <p>15 Q. Yes.</p> <p>16 A. Is that a hypothetical example?</p> <p>17 Q. Yes.</p> <p>18 A. If -- again, I mean, I am looking at this</p> <p>19 contract. If another X ESCO was giving me a</p> <p>20 contract that doesn't list the margin, yes, then I</p> <p>21 would be looking at the specifics that they have put</p> <p>22 in the contract to determine their rates.</p> <p>23 Q. Understood. Thank you.</p> <p>24 In connection with this case, you have not</p> <p style="text-align: right;">Page 72</p>
<p>1 MR. WITTELS: Objection.</p> <p>2 THE WITNESS: I mean, this is -- I mean,</p> <p>3 I'm not a contract expert, but its contract -- it</p> <p>4 says -- it should be charging what it says in the</p> <p>5 contract. As -- I mean, you know, if -- what</p> <p>6 happens, for example, if a customer doesn't, you</p> <p>7 know, oblige with their contract? There's</p> <p>8 implications for that, too. So if it doesn't say in</p> <p>9 the contract, yes, that shouldn't be charged.</p> <p>10 BY MR. MATTHEWS:</p> <p>11 Q. If it doesn't specify a margin, it</p> <p>12 shouldn't be charged?</p> <p>13 MR. WITTELS: Objection.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. MATTHEWS:</p> <p>16 Q. And that's -- to be clear, that's your view</p> <p>17 more broadly? I'm not just asking about this</p> <p>18 specific XOOM contract --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- correct?</p> <p>21 MR. WITTELS: Objection.</p> <p>22 THE WITNESS: I guess -- what's the</p> <p>23 question?</p> <p>24</p> <p style="text-align: right;">Page 71</p>	<p>1 done any analysis of how XOOM's variable rates</p> <p>2 compared to the utilities' rates, correct?</p> <p>3 A. We -- I think Figure 1 in our report does</p> <p>4 present a -- like an illustration or -- like</p> <p>5 presents the data that shows the total cost versus</p> <p>6 the utility rate.</p> <p>7 Q. Shows how the two moved over the same</p> <p>8 period of time?</p> <p>9 A. Exactly.</p> <p>10 Q. Okay. But you're not offering an opinion</p> <p>11 in this case that under the sales agreement, that</p> <p>12 XOOM was not permitted to charge more than the</p> <p>13 utility, right?</p> <p>14 MR. WITTELS: Objection.</p> <p>15 THE WITNESS: No. I mean, XOOM -- I mean</p> <p>16 our basis was the actual and estimated supply cost,</p> <p>17 whatever it should be charging.</p> <p>18 BY MR. MATTHEWS:</p> <p>19 Q. And the utility's rate is irrelevant to</p> <p>20 that consideration, right?</p> <p>21 MR. WITTELS: Objection.</p> <p>22 THE WITNESS: It is irrelevant for this</p> <p>23 contract. But we showed -- you know, our figure</p> <p>24 presents, you know, whether the total cost and</p> <p style="text-align: right;">Page 73</p>



<p>1 utility rates, how they compare. We presented that 2 in our report. 3 BY MR. MATTHEWS: 4 Q. Yes. But the XOOM -- that's XOOM's 5 reported supply costs compared to the utility's 6 rate, right? 7 A. Utility, yeah. 8 Q. But you don't believe that a comparison of 9 XOOM's rate to the utility's rate is relevant here? 10 MR. WITTELS: Objection. 11 BY MR. MATTHEWS: 12 Q. Right? 13 A. No. I guess we -- we -- we used that 14 Figure 1 to show what the utility in that territory 15 charged and what that compares to the total cost 16 of -- of the -- of XOOM. 17 Q. But you're not offering any sort of damage 18 model that seeks to compare XOOM's rate to the 19 utility's rate, right? 20 MR. WITTELS: Objection. 21 THE WITNESS: We provided a cross-check 22 analysis on, you know, what would the overcharges 23 look like if XOOM has charged utility rates instead 24 of, you know, its total cost. So that's the</p> <p style="text-align: right;">Page 74</p>	<p>1 they had just stayed with the utility, right? 2 MR. WITTELS: Objection. 3 THE WITNESS: I guess that doesn't -- I 4 mean, it's not to show that whether they better off, 5 but it shows -- if the utility rate was charged to 6 these customers -- 7 BY MR. MATTHEWS: 8 Q. Uh-huh. 9 A. -- against the rate that was -- that XOOM 10 was charging, that would be slightly lower because, 11 you know, the utility's rates were slightly higher 12 than the total cost that's presented in the XOOM's 13 rate-setting workbooks. 14 Q. Right. I understand the purpose for which 15 it was shown in the report. 16 A. Uh-huh. 17 Q. I'm asking factually, if the court awarded 18 the damages that you have advocated for under model 19 one, is it true that XOOM's variable-rate customers 20 would recoup more money than they would under the 21 damage model that you've illustrated using the 22 utility rate? 23 MR. WITTELS: Objection. 24 THE WITNESS: When you say "recoup more</p> <p style="text-align: right;">Page 76</p>
<p>1 cross-check analysis that we did in our report that 2 yielded a little bit lower damages, I think 49 3 million, about that. 4 BY MR. MATTHEWS: 5 Q. Uh-huh. 6 49 million under that model instead of 55 7 and a half -- 8 A. Yeah. 9 Q. -- right? 10 A. So that was a cross-check analysis. That 11 was not, you know, separate models. 12 We presented two methods only. Uh-huh. 13 Q. Right. Meaning that if customers had 14 stayed with the utility -- I'm sorry. 15 Meaning that if -- XOOM variable-rate 16 customers would do better than they would have had 17 they just stayed with the utility, right? 18 MR. WITTELS: Objection. 19 THE WITNESS: I don't understand when you 20 say "better off." 21 BY MR. MATTHEWS: 22 Q. If -- if XOOM's variable-rate customers 23 were awarded the damages that you have put forth 24 under model one, they would be better off than if</p> <p style="text-align: right;">Page 75</p>	<p>1 money," is that like -- clearly, the calculation 2 shows that utilities -- that the value that goes 3 down to 49 million because utility's rate -- rates 4 were slightly higher than the total cost. So the 5 damages would be slightly lower than the method one. 6 And when you say recouped, the customers 7 recoup, I don't know what you mean by that. 8 Q. Recoup, as in recover damages. 9 A. Yeah. I mean -- 10 Q. Do you understand that? 11 A. What is the question? I guess I'm not 12 following the question. 13 Q. I think we've got it. 14 Did you do any analysis of what other ESCOs 15 charged over the same time period? 16 A. No. 17 Q. And you don't know how XOOM's rates 18 compared to other ESCOs' rates during that time? 19 A. No. That's private information, so I 20 wouldn't be able to. 21 Q. What's private information? 22 A. I mean the other ESCOs' data was not 23 available to us, so I was not able to compare it to 24 the other.</p> <p style="text-align: right;">Page 77</p>

<p>1 at that spot, but they would consider what has  2 happened since ESCOs were allowed, and, like,  3 probably realize that this is the -- this is a  4 potential problem. So they've come up with this  5 order.  6 So that's not a decision based on 2019.  7 It's obviously looking back at the relevant cases,  8 and the problems that had happened in the past.  9 BY MR. MATTHEWS:  10 Q. But the guaranteed savings requirement that  11 you referred to does not apply retroactively,  12 correct?  13 MR. WITTELS: Objection.  14 THE WITNESS: I would -- I mean, I would  15 assume so.  16 I mean, they -- what I'm saying is that  17 they would look at whatever has happened in the  18 past, before 2019, given that time period, and then  19 that would lead to a decision in 2019 based on their  20 review of what -- what has happened since ESCOs were  21 allowed I guess within that time period.  22 BY MR. MATTHEWS:  23 Q. No question. I agree.  24 A. Uh-huh.</p> <p style="text-align: right;">Page 94</p>	<p>1 A. No. They would review their -- I guess the  2 regulatory body would review cases like this, right,  3 today what we are discussing, and see what the  4 potential issue with the charges, and make that  5 determination. They wouldn't go ahead and look at  6 the contracts individually, but they would look at  7 the similar cases that has happened in the prior  8 2019 period and come up with this decision.  9 Q. Uh-huh.  10 You don't have any belief that the PSC  11 looked at this case specifically when with entering  12 that order, right?  13 MR. WITTELS: Objection.  14 THE WITNESS: It didn't list XOOM, but --  15 but ESCO -- XOOM is an ESCO. So any ESCO defined  16 who is not providing gains to the customers, or  17 then -- then that category, ESCO -- XOOM is an ESCO.  18 That's considered in this bucket, I guess.  19 BY MR. MATTHEWS:  20 Q. For sure.  21 You're not aware of any testimony in that  22 New York PSC proceeding that related to XOOM  23 specifically, right?  24 MR. WITTELS: Objection.</p> <p style="text-align: right;">Page 96</p>
<p>1 Q. My question is: Do you know whether or not  2 the guaranteed savings requirement that you refer to  3 applied retroactively to rates that ESCOs charged  4 prior to 2019?  5 MR. WITTELS: Objection.  6 THE WITNESS: I mean, it -- it would not  7 apply, I guess, to before 2019.  8 But that's, in 2019, they've decided that  9 there has been overcharges based on the ESCOs  10 charging rates by looking at the ESCOs' rates  11 previously, prior to 2019. That's what led to this  12 decision.  13 BY MR. MATTHEWS:  14 Q. And when you say "overcharges" there, do  15 you just mean charges that are higher than what the  16 PSC would like to see?  17 A. Based on the contracts that these ESCOs  18 have defined with their customers, correct.  19 Q. Is it --  20 Go ahead. I'm sorry if I cut you off.  21 A. That would be my answer.  22 Q. Is it your understanding that the PSC  23 reviewed contract terms and engaged in a contract  24 analysis in reaching this order?</p> <p style="text-align: right;">Page 95</p>	<p>1 You don't -- do you know?  2 THE WITNESS: No.  3 BY MR. MATTHEWS:  4 Q. So you're not aware of any testimony in  5 that New York proceeding, the PSC proceeding, that  6 related to XOOM specifically, right?  7 MR. WITTELS: Objection.  8 THE WITNESS: No.  9 BY MR. MATTHEWS:  10 Q. And you're not aware of any instance in  11 which the New York PSC specifically considered this  12 lawsuit in reaching the decision with the reset  13 order, correct?  14 MR. WITTELS: Objection.  15 THE WITNESS: I -- I don't know.  16 I mean, I don't have knowledge of what  17 cases that they have considered. But when you  18 define ESCO, XOOM may be very much in that list. I  19 am not sure what they have reviewed to get to that  20 order.  21 MR. MATTHEWS: Got it.  22 Okay. Thank you very much.  23 Pass the witness.  24</p> <p style="text-align: right;">Page 97</p>



<p>1 COMMONWEALTH OF MASSACHUSETTS)</p> <p>2 SUFFOLK, SS. )</p> <p>3 I, Alexander K. Loos, RDR and Notary Public in</p> <p>4 and for the Commonwealth of Massachusetts, do hereby</p> <p>5 certify that there came before me on the 15th day of</p> <p>6 November, 2022, at 10:25 a.m., the person</p> <p>7 hereinbefore named, who was by me duly sworn to</p> <p>8 testify to the truth and nothing but the truth of</p> <p>9 her knowledge touching and concerning the matters in</p> <p>10 controversy in this cause; that she was thereupon</p> <p>11 examined upon her oath, and her examination reduced</p> <p>12 to typewriting under my direction; and that the</p> <p>13 deposition is a true record of the testimony given</p> <p>14 by the witness. I further certify that I am neither</p> <p>15 attorney or counsel for, nor related to or employed</p> <p>16 by, any attorney or counsel employed by the parties</p> <p>17 hereto or financially interested in the action.</p> <p>18  ve hereunto set my hand</p> <p>19 and this 27th day of</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Notary Public</p> <p>24 Commission expires 5/5/28</p> <p style="text-align: right;">Page 102</p>	
<p>1 Steven Wittles</p> <p>2 Slw@wittelslaw.com</p> <p>3 November 28, 2022</p> <p>4 RE: Mirkin vs. XOOM Energy</p> <p>5 DEPOSITION OF: Derya Eryilmaz 5544030</p> <p>6 The above-referenced witness transcript is</p> <p>7 available for read and sign.</p> <p>8 Within the applicable timeframe, 30 days, the witness</p> <p>9 should read the testimony to verify its accuracy. If</p> <p>10 there are any changes, the witness should note those</p> <p>11 on the attached Errata Sheet.</p> <p>12 The witness should sign and notarize the</p> <p>13 attached Errata pages and return to Veritext at</p> <p>14 errata-tx@veritext.com.</p> <p>15 According to applicable rules or agreements, if</p> <p>16 the witness fails to do so within the time allotted,</p> <p>17 a certified copy of the transcript may be used as if</p> <p>18 signed.</p> <p>19 Yours,</p> <p>20 Veritext Legal Solutions</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 103</p>	